

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

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In re application of: Gregg E. SKOW

Group Art Unit: 2167

Serial No.: 10/627,492

Examiner: K. M. Lovel

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Confirmation No.: 4206

For: MULTIPLE SYSTEM COMPATIBLE DATABASE SYSTEM AND METHOD

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Docket No.: H0003921 (002.0121)

Customer No.: 89955

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REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

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This is a Reply Brief pursuant to 37 C.F.R. § 41.41 in response to an Examiner's Answer mailed October 14, 2010. Each of the topics in the Examiner's Answer for which a response is supplied herein are indicated using appropriate subheadings on the following pages. This Reply Brief does not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. As such, Appellant submits it is in full compliance with 37 C.F.R. § 41.41(a).

I. RESPONSE TO ARGUMENT

A. THE EXAMINER'S RESPONSES TO APPLICANT'S ARGUMENTS REGARDING THE FAILURE TO DISCLOSE THE CLAIMED DATA SECTION ARE ERRONEOUS AND UNTENABLE

1. Inference is Not Evidence

As was noted in applicant's appeal brief, the examiner alleges that the content databases of Hartman et al. correspond to the claimed content databases. It was additionally noted that the portions of Hartman et al. that are pointed to in the Office action as allegedly disclosing the claimed content databases do not even remotely address the content databases. In response, the examiner states that she "disagrees that the cited portions are not inference to the content databases." The examiner then goes on to cite additional portions of Hartman et al., namely col. 3, l. 55 and col. 7, l. 49 through col. 8, l. 8, as evidence that the content databases are indeed mentioned. The examiner then concludes that "the specification as a whole deals with the retrieval of information from the content databases and therefore in essence so do the cited portions."

The sections of Hartman et al. that are delineated above, and in the final Office action, are explicitly pointed to as not only specifically disclosing (not just inferring) the content databases, but that the content databases comprise a plurality of data tables, each data table including a plurality of data records that each have one or more features that affect its compatibility with one or more of the end-user systems, each data record including a feature field that contains one or more feature bits representative of each of its features. Not only are the content databases not mentioned in the above-delineated sections of Hartman et al., the other specific features of the claimed content database are not remotely disclosed. What's more, these features are not inferred.

In sum, the examiner cannot articulate a finding of fact based on an alleged "inference to the content databases." The additional sections that the examiner cites to in the Examiner's Answer do nothing to cure these deficiencies.

2. Hartman et al.'s Attributes Do Not Correspond to the Claimed Features

The examiner, beginning at the bottom of page 18 and continuing to the top of page 19 of the Examiner's Answer, alleges that each record in the database disclosed in Hartman et al. has attributes and that, because the instant application (in paragraph [0027]) states the term

5 "attributes" is synonymous to the term "feature," then somehow the "attributes" disclosed in Hartman et al. are analogous to the claimed "features." For at least the following reasons, this analysis is wholly erroneous.

First, Hartman et al. clearly discloses that the term "attributes" means a type of value. That is, a record may have a binary, range, or string attribute, meaning that a record may be a
10 binary, range, or string type of value. Thus, when Hartman et al. states that "[a] 'record' is an entity having the attributes of one or more profiles," this merely means that a record is an entity having the same type of value (e.g., binary, range, or string) as one or more profiles. Again, this says nothing regarding the **compatibility** of a data record with an end-user system.

Secondly, the examiner's reference to paragraph [0027] of the instant application is at
15 best misplaced, and at worst disingenuous. This is because her reference does not take into account the entire context in which the equivalence of the terms "features" and "attributes" were presented. In particular, the relevant portion of paragraph [0027] states:

20 "As used herein, the terms "feature" and "attribute" are interchangeable, and are generally used to convey those characteristics of a data record that may affect its compatibility with an end-user system 102. Non-limiting examples of data record features include the particular revision cycle, the particular data cycle, and the particular data layout of a data record."

This statement clearly conveys what the term "feature" means, and thus what the term "attribute" means, within the context of the instant invention. Hence, the only way that the term "attribute"
25 in another reference can be used as a synonym to the term "feature" as used in the instant claims is if the term "attribute," as used in the reference, has the same meaning. Clearly, Hartman et al. does not use this same meaning.

3. A Failure to "See a Difference" is Not an Articulation of Fact

30 The examiner states, on page 19 of the Examiner's Answer, that "in the realm of retrieving data from a database, the examiner fails to see a difference between the concept of accessibility disclosed by Hartman and the concept of compatibility disclosed by the claimed invention." The examiner's failure to see this, after having been provided clear and

unambiguous definitions of these terms, is neither an articulation of fact nor a response to applicant's rebuttal that features that affect a data record's compatibility with one or more of end-user systems is wholly disparate from whether a user of an end-user system may access a data record.

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B. THE EXAMINER'S RESPONSES TO APPLICANT'S ARGUMENTS
REGARDING THE FAILURE TO DISCLOSE THE CLAIMED STRUCTURE
SECTION ARE ERRONEOUS AND UNTENABLE

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1. The Examiner Misunderstands "Accessibility" and "Compatibility"

On page 21 of the Examiner's Answer, the examiner again states that she fails to see the difference between accessibility, as disclosed in Hartman et al., and compatibility, as disclosed and claimed in the instant application, "since the outcome of both is whether or not a user/device is able to retrieve and utilize database records." Of course, if one reads the instant application, and understands, both syntactically and technically, the meanings of the terms "accessibility" and "compatibility," it is clear that the end-user systems may indeed be *able* to retrieve data records, but the database access manager 114 will prevent an end-user system from even trying to access data records that are not *compatible* with that specific end-user system. The claimed mechanism by which this is implemented is via *each feature mask record includ[ing] one or more feature mask values that indicate whether the one or more features of a data record are compatible with one or more of the end-user systems, and thereby indicate whether the data record is compatible with one or more of the end-user systems.*

The examiner, on page 22 of the Examiner's Answer, once again points to col. 8, ll. 54-61 as allegedly providing support for the claimed structure section. In particular, the examiner opines that the binary attribute matching that is described in this portion of Hartman et al. "allows the compatibility of records to be determined." It does nothing of the sort. Rather, it just determines, at least for records having binary attributes, whether the binary attributes of a user generated query match the corresponding records in the query database. Again, this matching has nothing whatsoever to do with, or even relate to, **compatibility** with an end-user system.

Finally, the examiner's entire assertion regarding all of the claimed limitations of the structure section, not just the feature mask values, is wholly erroneous and devoid of any evidence in Hartman et al. to support a factual finding.

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C. THE EXAMINER'S RESPONSE TO APPLICANT'S ARGUMENTS
REGARDING McELHINEY IS NON-SUBSTANTIVE

1. The Claims Recite More Than Just "Partitioning of a Table"

10 The examiner, on page 23, merely states that she "respectfully disagrees" with applicant's argument that McElhiney merely discloses storing data in a database in the form of two-dimensional tables, and splitting each of the tables into sub-tables if the number of records exceeds some threshold. This respectful disagreement is not a factual rebuttal. Nonetheless, as was stated in applicant's Appeal Brief, even if one were to concede that McElhiney discloses
15 what the Office action alleges,¹ it does not make up for the rather glaring deficiencies of Hartman et al. with respect to the independent claims.

20 D. THE EXAMINER HAS NOT OVERCOME APPLICANT'S REBUTTAL THAT
THE INDEPENDENT CLAIMS ARE NON-OBVIOUS

1. No Factual Basis or Articulated Reasoning Provided

As noted in the applicant's Appeal Brief, the alleged combination of Hartman et al. and McElhiney fails to disclose each and every element recited in the independent claims. As such,
25 there can be no teaching, suggestion, or motivation that would have led one of ordinary skill to combine these reference teachings to arrive at the claimed invention.

Moreover, the Examiner has not provided a factual basis or articulated reasoning that the inventions encompassed by the independent claims have resulted from: (1) combining prior art elements according to known methods to yield predictable results; (2) a simple substitution of
30 one known element for another to obtain predictable results; (3) using a known technique to improve similar devices (methods, or products) in the same way; (4) applying a known technique

¹ Applicants, of course, do not concede this point.

to a known device (method, or product) ready for improvement to yield predictable results; (5) choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success (e.g., “obvious-to-try); or (6) known work in one field of endeavor that prompted variations of it for use based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art.

E. THE EXAMINER’S RESPONSE REGARDING INDEPENDENT CLAIM 49 IS NON-SUBSTANTIVE

The examiner, on page 35 of the Examiner’s Answer, clearly fails to substantively respond to applicant’s rebuttal regarding the Hartman et al./McElhiney/Goldberg et al./Tang et al. combination. Rather, the examiner merely states that she “respectfully disagrees.” A statement of disagreement is not a substantive response, and thus must be found as an admission that applicant has fully rebutted the alleged *prima facie* case of obviousness.

F. THE EXAMINER’S RESPONSES REGARDING THE DEPENDENT CLAIMS ARE EITHER NON-SUBSTANTIVE OR UNPERSUASIVE

1. Dependent Claims 6, 20, and 42

The examiner, on Page 26 of the Examiner’s Answer, states that “the claimed system identification table is considered to be analogous to the user system,” and references paragraph [0035] and FIG. 9 as allegedly providing support for this assertion. How a table of data can in any way be considered analogous to an end-user system is illusory. Furthermore, it is unclear what point the examiner is trying to make via this analogy, because she then goes on to state that “the user profile and client profile databases of Hartman [et al.] are considered to represent the information that uniquely identifies each end-user system.” Indeed, the only response applicant can muster to this is: “*What?*”

Nonetheless, the examiner concludes that “in order for Hartman [et al.] to be able to retrieve a particular user profile or client profile, it is well-known in the art that some type of identifier would have to be utilized in order to differentiate between profiles since the profile database stores a plurality of profiles.” Okay. But even if one were to concede this conclusory

allegation,² this is not an articulation of a factual finding that this allegedly well-known mechanism would be a structure section that “further comprises a system identification table that includes data that uniquely identifies each of the end-user systems,” as recited in these dependent claims.

Although the client profile database of Hartman et al. may include profiles of client devices, there is no teaching or suggestion of including such information in a separate system identification table with a structure section. Moreover, this data may not “uniquely identify” each client device, since one or more users may have substantially identical client devices (e.g., software versions, processor type, processor speed, memory size, modem type, etc.).

2. Dependent Claims 7, 21, and 43

These dependent claims recite that the system identification table comprises a plurality of system identification records, and that each system identification record is associated with each of the end-user systems. On page 27 of the Examiner’s Answer, the examiner states that she considers the user profile and client profile databases of Hartman et al. to represent the information that uniquely identifies each end-user system. However, this generalization, which applicants certainly do not concede as factual, does not even remotely disclose or suggest a system identification table that comprises a plurality of system identification records, and that each system identification record is associated with each of the end-user systems.

The examiner’s mere allegation of a generalization does not, and indeed cannot, support a finding of the specific structure that is recited in these claims.

3. Dependent Claims 11, 25, and 47

These dependent claims recite that each data record includes a plurality of fields in addition to the feature field, and that the structure section further comprises a field definition table that includes at least data representative of each of the data record fields. The examiner, on page 28 of the Examiner’s Answer, merely reiterates the nonsensical argument that because the instant application (in paragraph [0027]) states the term “attributes” is synonymous to the term “feature,” then somehow the “attributes” disclosed in Hartman et al. are analogous to the claimed

² Applicant certainly does not concede this point.

“features.” This allegation has already been shown to be fallacious. Moreover, this allegation has nothing whatsoever to do with the explicit structure recited in these dependent claims.

4. Dependent Claims 8, 22, and 44

The examiner, on page 30 of the Examiner’s Answer, clearly fails to substantively respond to applicant’s rebuttal regarding what is disclosed in Goldberg et al. Rather, the examiner merely states that she “respectfully disagrees.” A statement of disagreement is not a substantive response, and thus must be found as an admission that applicant has fully rebutted the alleged *prima facie* case of obviousness.

5. Dependent Claims 9, 23, and 45

The examiner, on page 31 of the Examiner’s Answer, clearly fails to substantively respond to applicant’s rebuttal regarding what is disclosed in Goldberg et al. Rather, the examiner merely states that she “respectfully disagrees.” A statement of disagreement is not a substantive response, and thus must be found as an admission that applicant has fully rebutted the alleged *prima facie* case of obviousness.

6. Dependent Claims 10, 24, and 46

The examiner, on page 31 of the Examiner’s Answer, clearly fails to substantively respond to applicant’s rebuttal regarding what is disclosed in Goldberg et al. Rather, the examiner merely states that she “respectfully disagrees.” A statement of disagreement is not a substantive response, and thus must be found as an admission that applicant has fully rebutted the alleged *prima facie* case of obviousness.

7. Dependent Claims 12, 26, and 48

The examiner, on page 32 of the Examiner’s Answer, clearly fails to substantively respond to applicant’s rebuttal regarding what is disclosed in Goldberg et al. Rather, the examiner merely states that she “respectfully disagrees.” A statement of disagreement is not a substantive response, and thus must be found as an admission that applicant has fully rebutted the alleged *prima facie* case of obviousness.

8. Dependent Claims 13 and 27

The examiner, on page 33 of the Examiner's Answer, clearly fails to substantively respond to applicant's rebuttal regarding what is disclosed in Goldberg et al. Rather, the examiner merely states that she "respectfully disagrees." A statement of disagreement is not a substantive response, and thus must be found as an admission that applicant has fully rebutted the alleged *prima facie* case of obviousness.

9. Dependent Claims 14 and 28

The examiner, on page 34 of the Examiner's Answer, clearly fails to substantively respond to applicant's rebuttal regarding what is disclosed in Goldberg et al. Rather, the examiner merely states that she "respectfully disagrees." A statement of disagreement is not a substantive response, and thus must be found as an admission that applicant has fully rebutted the alleged *prima facie* case of obviousness.

II. CONCLUSION

In view of the foregoing, Appellant once again submits that the final rejection of Claims 1, 6-15, 20-28, 37, and 42-49 is improper and should not be sustained.

Respectfully submitted,

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